

REMARKS

The present amendment is in response to the Office Action dated August 21, 2008. Claims 22-42 are now present in this case. No claims are canceled. No new claims have been added.

Claims 22, 25-32, 35-39 and 42 stand rejected under 35 U.S.C. § 103(a) as unpatentable by U.S. Patent No. 7,328,008 to Bjorken combined with 3GPP TS 23.060 V3.15.0 (2003-06) hereinafter referred to as 3GPP. The applicants respectfully traverse this rejection and request reconsideration.

The applicants believe these rejections are overcome because Bjorken is not valid prior art. A 35 U.S.C. § 103 rejection must be based on art valid under 35 U.S.C. § 102. (MPEP 2141.01.) Bjorken cannot be § 102(a) prior art since it was not patented or published before the filing date of the present application. The filing date of the present application is December 16, 2003 and Bjorken was first published on September 10, 2004. Bjorken cannot be § 102(e) art, because Bjorken's international filing date of January 9, 2004 is after the filing date of the present application. A reference's foreign priority date under 35 U.S.C. § 119(a)-(d) and (f) cannot be used as a 35 U.S.C. § 102(e) reference date. (MPEP 2136.03.) Thus the fact that Bjorken has a foreign application priority date of February 28, 2003 does not make Bjorken valid prior art in this case. For at least this reason, the applicants believe these rejections have been overcome.

Claims 23, 33, and 40 stand rejected under 35 U.S.C. § 103(a) as unpatentable by Bjorken combined with 3GPP, and combined with U.S. Patent No. 6,996,092 to Maguire. The applicants respectfully traverse this rejection and request reconsideration. The applicants believe these rejections are overcome because Bjorken is not valid prior art. As discussed above regarding the rejection of claim 22, Bjorken has an international filing date that is later than the present application filing date. For at least this reason, the applicants believe these rejections have been overcome.

Claims 24, 34, and 41 stand rejected under 35 U.S.C. § 103(a) as unpatentable by Bjorken combined with 3GPP, and combined with U.S. Patent Publication No. 2002/0137532 A1 to Landais. The applicants respectfully traverse this rejection and request reconsideration. The applicants believe that these rejections are overcome because Bjorken is not valid prior art. As the applicants discussed above regarding the rejection of claim 22, Bjorken has an international filing date that is later than the filing date of the present application. For at least this reason, the applicants believe these rejections are overcome.

The Examiner will kindly note that representation in this matter has been transferred to another attorney. A revocation/substitute power of attorney will be filed in the near future.

In view of the above amendments and remarks, reconsideration of the subject application and its allowance are kindly requested. The applicant has made a good faith effort to place all claims in condition for allowance. If questions remain regarding the present application, the Examiner is invited to contact the undersigned at (206) 757-8203.

Respectfully submitted,

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